SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI HANDED DOWN MAY 4, 2010

Palmer v. State, No. 2008-KA-02100-COA (Miss.App. May 4, 2010)

CRIME: Murder
SENTENCE: Life

COURT: Jackson County Circuit Court
TRIAL JUDGE: Hon. Robert Krebs

APPELLANT ATTORNEY: Justin Cook
APPELLEE ATTORNEY: Ladonna C. Holland
DISTRICT ATTORNEY: Anthony N. Lawrence, III

DISPOSITION: Affirmed. Maxwell, J., for the Court: King, C.J., Lee and Myers, P.JJ., Irving, Griffis, Barnes, Ishee and Roberts, JJ., Concur.

ISSUE: Ineffective Assistance of Counsel

FACTS: Cleveland Palmer and his wife Felicia lived in an apartment complex in Pascagoula. On October 26, 2007, Felicia reported to apartment management that their neighbor, Glenn Manning, had been stealing electricity from the complex. Manning confronted Felicia and called her a derogatory name. Felicia became angry and contacted Palmer. Palmer arrived home and confronted Manning. An argument ensued when Manning refused to apologize to Felicia. A neighbor testified that someone left in one of Palmer's cars and returned with a "small shotgun." He later saw Palmer with the same weapon. Later that night, Manning and Palmer again argued. When Manning tried to return to his apartment, Palmer armed himself with a sawed-off shotgun and a stick. He then followed Manning into Manning's apartment. The details surrounding the ensuing events vary. However, it is undisputed that Manning died as a result of a gunshot wound to his abdomen. Palmer threw the gun into a nearby river. Palmer initially claimed Manning pulled the gun on him and Manning was shot by accident during the struggle. He later admitted this was a lie to protect his wife because he feared her probation would be revoked if police knew he possessed a weapon. At trial, he admitted arming himself before confronting Manning, but claimed he only wanted to beat him with a stick. He stated the gun went off during a struggle when Manning grabbed the gun. Other witnesses present, along with physical evidence, contradicted Palmer's claim of accident.

HELD: Palmer was not denied effective assistance of counsel because his lawyer failed to object to hearsay from one of the police officers. Palmer claimed the violation of his confrontation rights was plain error. Although the officer's testimony of what Felicia said was hearsay, it actually supported Palmer's defense. There was no prejudice to Palmer, so the error was harmless.

==>The officer also testified a witness told him he saw a black man entering Manning's apartment carrying a gun who told Manning, "I got your motherf–king a-s now." Although it was error to admit the hearsay, counsel's decision not to object could have been strategy. The testimony did not necessarily conflict with Palmer's version of events. Due to the weight of the evidence, the

admission of the statement was harmless error.

==>Palmer was not denied effective assistance for failing to object to the admission of Palmer's third statement to police. Even though he was represented by counsel, Palmer initiated contact with police and signed a waiver of his *Miranda* rights prior to engaging in his third conversation with the police.

==>Palmer was not denied effective assistance for failing to inspect physical evidence possessed by the State. Palmer's entire defense was based on his theory of an accidental shooting. Palmer failed to show how the outcome of his trial would have differed had his attorney inspected the gun and stick.

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62757.pdf

McBride v. State, No. 2008-KA-01347-COA (Miss.App. May 4, 2010)

CRIME: Sexual Battery
SENTENCE: 25 years

COURT: Coahoma County Circuit Court
TRIAL JUDGE: Hon. Charles E. Webster

APPELLANT ATTORNEY: Dan Hinchcliff
APPELLEE ATTORNEY: Lisa L. Blount
DISTRICT ATTORNEY: Laurence Mellen

DISPOSITION: Affirmed. Barnes, J., for the Court: King, C.J., Lee and Myers, P.JJ., Irving and Maxwell, JJ., Concur. Roberts, J., Dissents with Separate Written Opinion Joined by Griffis and Ishee, JJ.

ISSUES: (1) Speedy Trial, and (2) Sufficiency of the Evidence

FACTS: In May of 2006, Jerry McBride was indicted for the sexual battery of his daughter, who the State alleged was under 14 at the time. The indictment stated the battery occurred "on or about or between January 2002, and December 2005." McBride's trial was finally held on February 19, 2008. The State called the daughter, a middle-school counselor, and a DHS specialist. The victim, who was 18 years old at the time of trial, testified regarding two sexual incidents with McBride. At the time of the first incident, she was approximately 11 years old and McBride was living with his mother. He drove her and his 7 year-old son to a friend's house in Clarksdale. Nobody was home. McBride took his daughter to the back of the house. He began hugging and touching her. He then pulled down her pants, unzipped his pants, and put his penis in her vagina. She testified she fought and screamed, but she did not tell anyone about the incident because she was scared. Several years later, a second incident occurred when she was about 15. She testified McBride fondled her breasts and touched her between her legs, on top of her clothes.

HELD: McBride was not denied his constitutional rights to a speedy trial. The Court did clarify that the clock started at McBride's indictment, not his arrest 3 months later. The reasons given by the State for the delay were the timing of McBride's arrest during the court term, the timing of the mini-terms, administrative oversight or mere negligence, docket overcrowding, and the availability of a key witness for the State. McBride did not demand a speedy trial, but only asked that his case be dismissed due to a speedy trial violation. Finally, McBride could show no prejudice by the delay.

==>McBride was not denied his statutory right to a speedy trial. McBride did not complain about the lack of a speedy trial until well past the 270 day limit. Additionally, McBride did not specifically raise his statutory right at trial.

==> The evidence was sufficient to support the verdict. McBride claimed the State failed to prove the victim was under 14 when the incident occurred. McBride claimed that since the victim stated she was 11 during the time of the sexual battery, and since she was born on November 11, 1989, the incident could not have occurred on a date after January 2002. On cross, she admitted that she told the DHS interviewer she was around 13 or 14 years old the time of the first incident, but she was mistaken. On redirect, she stated that she could have been 12 when the crime occurred. The exact date of the crime was not jurisdictional, since the evidence of when the sexual battery occurred was not near the date of the victim's 14th birthday, November 11, 2003.

==> "While the testimony of the victim as to her age during the incident's time frame is vague, we maintain that, viewing the evidence in the light most favorable to the State, there is sufficient evidence for a reasonable juror to find that the victim was sexually battered well before her fourteenth birthday and within the parameters of the indictment's stated dates of "on or about or between" January 2002 and December 2005."

ROBERTS, J., DISSENTING:

==>The majority's conclusion that the reason for the delay in McBride's trial was mostly due to an overcrowded docket was "flawed." McBride case was never even put on the docket until late 2007. "I would hold that this Court cannot sanction the gross negligence that accompanies losing someone in the system for seventeen consecutive months by applying the same weight that accompanies a delay in bringing someone to trial due to an overcrowded docket." Furthermore, the failure to demand a speedy trial does not weigh against McBride, it simply does not weigh in his favor. There was also some question on whether McBride understood the judge's questions regarding prejudice.

==>The age of the victim at the time of the offense is an essential element under sections 97-3-95(1)(c), 97-3-95(1)(d), and 97-3-95(2). The court's instructions did not require the jury to find that the victim was under 14 at the time of the offense as the indictment alleged. The indictment and instructions required the jury to conclude beyond a reasonable doubt that the sexual battery occurred while the victim was younger than 14 and that it occurred between January 2002 and December 2005. "Inextricably, the State never requested an amendment to the indictment to correct the time period alleged in the indictment to conform to the proof." McBride should be discharged.

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62956.pdf

Weems v. State, No. 2007-KA-02011-COA (Miss.App. May 4, 2010)

CRIME: Taking Contraband onto the Mississippi State Penitentiary
SENTENCE: 3 years House Arrest

COURT: Sunflower County Circuit Court
TRIAL JUDGE: Hon. Margaret Carey-McCray

APPELLANT ATTORNEY: Julie Ann Epps
APPELLEE ATTORNEY: W. Glenn Watts
DISTRICT ATTORNEY: Willie Dewayne Richardson

DISPOSITION: Affirmed. Griffis, J., for the Court: King, C.J., Lee and Myers, P.JJ., Irving, Barnes, Ishee, Roberts and Maxwell, JJ., Concur.

ISSUES: (1) improper cross-examination of defendant, (2) improper closing argument by the State, and (3) ineffective assistance of counsel.

FACTS: On May 7, 2005, Betty Weems went to the Mississippi State Penitentiary at Parchman to visit her son, Victor Weems. Weems rode with her daughter. It was their first time to Parchman. At the entrance, MDOC has posted written notice that informs visitors that no money is allowed on the premises. The guards informed Weems that they could not bring more than five dollars into the facility. Because they both brought money, they walked back to the car and placed their money in the trunk. After returning, an MDOC officer searched Weems. The officer requested that Weems take off her bra and expose the inside of the bra. Weems failed to comply. When asked to comply, Weems told the officer there was "nothing in my bra." The officer pulled the bra out and looked inside. She testified that she saw money "sticking from under the side of the bra." The money consisted of a one-hundred-dollar bill folded with five twenty-dollar bills. At trial, Weems testified that she had tucked the money in her bra for safekeeping that morning. She admitted that she had brought the money into the MDOC facility, but claimed that she had forgotten that she had tucked the money in her bra until the guard found it.

HELD: Weems claimed the prosecution improperly cross examined her about a letter Victor allegedly wrote to her asking for money. The letter was never offered or admitted into evidence. However, Weems failed to object at trial, so the issue is barred. The prosecutor sought to impeach Weems by offering statements she purportedly had made to the officer and a letter she supposedly had received. Weems denied the existence of the letter. The State's effort to impeach either failed, or it was abandoned, as it was not mentioned again. This was not plain error.

==>Weems's claim that the State improperly argued facts not in evidence is procedurally barred for failing to object at trial. The prosecutor argued that the women on the jury had to know that a wad a money in a bar was uncomfortable and Weems had to know it was there. The prosecutor's argument was based on inferences from the facts that were in the record.

==>Weems also claimed the prosecution erred by asking Weems if the officers who testified were lying. Again, there was no objection at trial and the issue is waived. Regardless, since the State had

shown that the officer's report was contradictory to what Weems claimed at trial, the question did not further the State's case or unduly influence the jury.

==>Weems was not denied effective assistance of counsel for failing to preserve these issues for appeal by failing to object. The Court found the record insufficient to affirmatively show ineffective assistance of counsel of constitutional dimensions. Weems is free to bring the issue up again on PCR.

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62561.pdf